



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Triton Marine Construction Corporation

File: B-250856

Date: February 23, 1993

Russell B. Inserra for the protester.

Garrett L. Rensing, Esq., and Paul M. Fisher, Esq., Office of the General Counsel, Department of the Navy, for the agency.

Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's determination that protester's proposal was technically unacceptable was reasonable where proposal failed to explain how the firm would meet certain solicitation requirements, or to show that proposed architect/engineering firm possessed the required experience.

2. Agency's evaluation of proposed architect/engineering firm based on a requirement for five references instead of the two required in the solicitation did not prejudice the protester where the two references offered by the protester did not meet the requirements, and protester does not argue that any additional references it might have offered, had it known the agency actually wanted five references, would have met the requirements.

DECISION

Triton Marine Construction Corporation protests the rejection of its proposal, and the award of a contract to Marathon Construction Corporation, under request for proposals (RFP) No. N68711-92-R-1035, issued by the Department of the Navy for structural repairs to Pier 5 at the San Diego, California Naval Station. Triton challenges the agency's determination that its proposal was technically unacceptable.

We deny the protest.

The RFP required the successful contractor to design and execute mechanical and structural improvements to the pier. Accordingly, it called for detailed technical proposals, and provided that the proposals would be evaluated based on three factors: (1) proposed work methodology and procedures; (2) qualifications of the contractor and proposed subcontractors, and (3) qualifications of the proposed architect/engineer (A/E) firm. The RFP stated that proposals would be rated "exceeds," "acceptable," or "unacceptable" for each factor according to whether they exceeded, met, or failed to meet the standards set forth in the RFP. In this regard, the RFP asked for a "complete explanation of any of the techniques and procedures for accomplishing the work." It also advised that

"Statements that the prospective offeror understands, can or will comply with all drawings [and] specifications; statements paraphrasing the specifications or parts thereof, and phrases such as 'standard procedures will be employed' or 'well known techniques will be used' etc. will be considered insufficient."

Four offerors submitted proposals by the June 24, 1992 deadline. The proposal evaluation board (PEB) found Triton's proposal unacceptable under two of the three evaluation factors, work methodology and qualifications of the A/E firm. Consequently, the PEB concluded that Triton's proposal was unacceptable overall. The agency then awarded the contract to Marathon on the basis of its initial proposal. Upon learning of the rejection of its proposal and the award to Marathon, Triton filed this protest. Triton essentially alleges that it should have received the award since its proposal met all of the RFP requirements at a lower price than Marathon proposed.

In reviewing whether a proposal was properly rejected as technically unacceptable, we will not reevaluate the proposal, as the determination of whether a proposal meets the contracting agency's needs is a matter within agency's discretion. Benton Corp., B-249091, Oct. 21, 1992, 92-2 CPD ¶ 264. We will, however, examine the record to determine whether the evaluators' judgments were reasonable and consistent with the stated evaluation criteria. Id. For example, we will examine whether the RFP called for detailed information that the proposal did not furnish, and whether the deficiencies tend to show that the offeror did not understand what it would be required to do under contract. See DRT Assocs., Inc., B-237070, Jan. 11, 1990, 90-1 CPD ¶ 47. Where an offeror fails to clearly set forth in its proposal the technical information necessary to convince the agency that its proposal meets the agency's needs, the agency reasonably may find the proposal technically

unacceptable. Wheco Corp., B-246978; B-248980, Oct. 13, 1992, 92-2 CPD ¶ 243.

As noted above, the PEB rated Triton's proposal unacceptable under the work methodology and procedures factor. This evaluation factor was comprised of five subfactors:

"(i) identification of intended equipment, tools, and materials, as well as use of materials, the application methods intended and the labor necessary to complete the required services;

"(ii) conceptual sketches [of various aspects of the work];

"(iii) description of all modifications to the pier utility systems, bollards, cleats, and other fixtures that now exist on the pier;

"(iv) description of the preparation and repainting of all fixtures and objects now on the pier;

"(v) description of the drainage for the new deck."

The PEB found Triton's proposal unacceptable under all but the conceptual sketches subfactor. With regard to the first subfactor, which addressed identification of equipment and methods, the Navy states that Triton identified and described the equipment, tools, materials and methods it would use to perform concrete placement for the new deck, but failed to do so for the other project requirements. The Navy also notes that the PEB found Triton's explanation of the details of deck placement deficient. In this connection, Triton proposed to pour unusually large amounts of concrete in two continuous placements of over 24 hours each, but did not explain how it would deliver the large volumes of concrete to the paver. Without these details, the PEB concluded, it could not assess the risk or probability of success of Triton's proposed approach. As to the last three subfactors, dealing with utility systems, repainting and drainage, the PEB found that Triton's proposal did not address these areas at all.

Triton challenges the PEB's conclusion, essentially arguing that there was no need to explain how it would accomplish certain aspects of the work. For instance, Triton takes issue with the PEB comment that it did not describe the preparation and repainting of fixtures on the pier, asserting that the RFP already provided detailed specifications and procedures for this task. As another example, Triton objects to the PEB's comment that it was unclear how concrete would be transported to the paver.

Triton now explains that a local concrete supplier would transport ready-mixed concrete to the pier in a mixing truck, back up the truck to the paver conveyor and discharge the concrete, a procedure "so obvious that it did not require comment."

We find nothing unreasonable in the agency's conclusions regarding the lack of information in Triton's proposal. As noted above, the RFP generally required complete explanations of all procedures to be used in accomplishing the work, and warned that references to "standard procedures" or paraphrasing of the specifications would be insufficient to meet this requirement. In other words, Triton clearly was on notice that it needed to address these areas in detail in its proposal, notwithstanding the level of detail in the specifications or the "obvious" nature of the procedures, in order for its proposal to be considered acceptable. Triton's proposal did not meet this requirement. It did not include any discussion of the modifications to the pier utility systems (subfactor (iii)) or the preparation and repainting of fixtures (subfactor (iv)). The proposal did include a brief reference to drainage under the section covering concrete placement techniques ("[a] machine [is used] to assure the levelness and proper drainage of the new deck"), but nowhere included the required detailed description of the drainage of the deck (subfactor (v)). (In contrast, the awardee's proposal included discussion covering all of these subfactor areas.) The agency therefore properly rated Triton's proposal unacceptable under these subfactors.¹

Triton also objects to the Navy's conclusion that its proposed A/E firm was unacceptable. The evaluation factor for the A/E firm's qualifications was comprised of four subfactors: (1) experience in design of at least two similar projects; (2) performance in design of at least 10 completed projects; (3) specialized qualifications of proposed design personnel; and (4) design quality control procedures. The PEB found Triton's proposal unacceptable under the first two subfactors. Triton asserts that the Navy's conclusion was unreasonable, as the Triton proposal discussed 2 pier repair projects that are similar to the

¹We do not agree with the Navy's determination that Triton's proposal was unacceptable under subfactor (i) based on its failure to discuss concrete delivery, since we also find no such discussion in the awardee's proposal. However, given our conclusion that the proposal properly was rated unacceptable under the other areas in issue, there is no basis for questioning the Navy's overall unacceptability conclusion. See Engineering Mgmt. Resources, Inc., B-248866, Sept. 29, 1992, 92-2 CPD ¶ 217.

Pier 5 repair project, as well as 10 additional completed projects.

The Navy explains, and our review of Triton's proposal confirms, that the two similar design projects Triton discussed in its proposal were the work, not of Triton's proposed A/E firm, Leedshill-Herkenhoff, but of Leedshill-Herkenhoff's proposed structural subcontractor, Travis, Verdugo and Curry. There is no evidence in the proposal that Leedshill-Herkenhoff was experienced in managing the design of similar projects. Moreover, the proposal indicated that Leedshill-Herkenhoff had not worked with Travis, Verdugo and Curry before, creating further uncertainty as to the likelihood of Leedshill-Herkenhoff's successful management of the A/E work. Triton does not dispute these findings; it merely argues that it (Triton) has successfully completed 17 similar contracts for the Navy. We therefore have no basis to disagree with the Navy's conclusion that Triton's proposal failed to demonstrate Leedshill-Herkenhoff's experience in managing similar projects.

Triton argues that the PEB's unacceptable rating of its proposal under this subfactor was improper because the PEB was actually looking for evidence of experience in five similar projects rather than the two required by the RFP. While the Navy concedes that the PEB did in fact evaluate proposals based on an unstated requirement for five project references, the record shows that Triton was not prejudiced by the error. Since the two references Triton furnished did not meet the requirements, as discussed above, the PEB would have found the proposal unacceptable in this area in any case. Furthermore, Triton does not argue that it could have offered additional references that met the requirements had it known the agency actually wanted five references instead of two. Since the agency's error did not prejudice Triton, it is not a basis for sustaining the protest. See Fiber-Lam, Inc., 69 Comp. Gen. 364 (1990), 90-1 CPD ¶ 351.


Triton's proposal was also considered unacceptable under the A/E evaluation factor for failure to provide sufficient information about 10 completed projects. Although Triton included information about 10 Leedshill-Herkenhoff projects (excluding the 2 pier projects executed by Travis, Verdugo and Curry), the PEB found that the information was incomplete. Our review of the proposal supports the PEB's conclusion. In this regard, the proposal lacks complete cost performance information for 9 of the 10 projects, and includes a completion history for only 6 of the projects. Finally, as noted by the PEB, Triton only furnished performance evaluation information for one project. We therefore have no basis to disagree with the Navy's conclusion that Triton's proposal failed to establish that

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its A/E firm was sufficiently qualified under the terms of the RFP.

Triton contends that two of the evaluators were biased in favor of Marathon based on their negative comments on Triton's evaluation worksheets. Government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Northwestern Travel Agency, Inc., B-244592, Oct. 23, 1991, 91-2 CPD ¶ 363. In addition to producing credible evidence showing bias, the protester must demonstrate that the bias translated into agency action which unfairly affected the protester's competitive position. Id. Here, the only evidence Triton offers to show bias is the negative comments the PEB made about its technical proposal in the evaluation worksheets. Such negative comments alone do not establish bias on the part of the agency. Moreover, as we have found that the record supports the PEB's conclusion that Triton's proposal was technically unacceptable, we have no basis upon which to question the motives of the evaluators. See D. M. Potts Corp., B-247403.2, Aug. 3, 1992, 92-2 CPD ¶ 65.

The protest is denied.


for James F. Hinchman
General Counsel

²One of the negative evaluation comments concerned Triton's approach to quality control: one evaluator stated that there was no discussion of quality control, while the other evaluators found that Triton offered a good discussion of quality control. Although the first evaluator's comment appears to have been erroneous, it did not prejudice Triton in the evaluation, as Triton's proposal was rated acceptable under this evaluation subfactor.